

REMARKS

I. Status of the claims and application

Claims 26-54 are pending. Claims 1-25 were previously cancelled herein without prejudice or disclaimer and solely for the purpose of expediting prosecution.

Claims 26, 33, 38, 48, and 53 have been amended after taking into consideration the Examiner's commentary under Section 112, second paragraph:

Claim 26 is amended to clarify that the last step of the claimed method produces a "transgenic tea plant."

Claim 33 is amended to replace "receptive" with "appropriate" as suggested by the Examiner. Applicants thank Examiner Helmer for this suggestion.

Claim 38 is amended to clarify when the chamber, which houses the explant(s), is under a "vacuum." Hence, the step of bombarding the explant with glycerol-free metal particles is conducted when the chamber is under a vacuum. See, for instance, page 5, subsection (k) of the specification.

Claim 48 is amended to change "comprises" to "comprising."

Claim 53 is amended to clarify that after the explants have been bombarded once "and before the step of determining the presence of the desired DNA in one or more cells of the explant," the position of the explants is rotated by 180 degrees and then the explants are bombarded again.

Since none of these amendments introduce new matter, Applicants request that the amendments be entered, and that the rejections under 35 U.S.C. § 112, second paragraph be withdrawn.

II. Dr. Bhattacharya's Rule 1.132 Declaration corroborates that the claimed invention can be used to produce whole transgenic tea plants

Claims 26-54 are rejected under 35 U.S.C. § 112, paragraph 1 for allegedly failing to comply with the enablement requirement. In short, the Office contends that none of the Examples or Figure 1 demonstrates that whole transgenic tea plants were regenerated from explants transformed according to the presently-claimed method.

The Examiner kindly invited Applicants, however, "to supply clarification and other information, preferably as a Rule 1.132 Declaration, about Applicant's results with the claimed invention." Office Action at page 4.

At the outset, Applicants do not acquiesce with the Examiner's first sentiment but are grateful for the opportunity to provide the attached Rule 1.132 declaration by Dr. Amita Bhattacharya, who is a named co-inventor of the present application. Dr. Bhattacharya's declaration corroborates the teachings of the specification.

Specifically, Dr. Bhattacharya attests that she has been successful in making whole transgenic tea plants according to the claimed method. Please see paragraph 7 at page 2 of the declaration.

In her declaration, Dr. Bhattacharya provides photographs of explants transformed with plasmid pRT99GUS using the claimed "bombardment" protocol and the subsequently-grown whole tea plants. The plasmid, pRT99GUS, is the plasmid that is described in the application. See page 5, subsection (h). Please also see Exhibit B of Dr. Bhattacharya's declaration. In particular, please note Exhibit B (c) and (d), which show saplings that have been regenerated from the transformed tea explant, and Exhibit B (e) and (f), which are photographs of whole transgenic tea plants that have been grown from those saplings.

Thus, the method of the present invention is enabled for producing a whole transgenic tea plant and Applicants, therefore, respectfully request that this rejection be withdrawn.

III. The orientation of Figure 1 in the originally-filed application was inadvertently reversed

Applicants bring to Examiner Helmer's attention the fact that Figure 1, as it appears in the originally-filed application, was inadvertently reversed at the time of filing. Hence, the leaf explant that is depicted in the top left-hand corner of the original filing, namely Figure 1 (a), actually should be Figure 1 (r); and, likewise, Figure 1 (p) of the original figure, should be Figure 1 (c).

Having recognized this inadvertent transposition, Dr. Bhattacharya provides in Exhibit A of her declaration, the properly oriented version of Figure 1, which is identical to Figure 1 of the originally-filed application, save for its orientation.

In its correct orientation, therefore, it is clear that the "control" explants, as depicted in Exhibit A (a), (b), and (c), which correspond to Figure 1 (p), (q), and (r), are not speckled – they are entirely free of transformation "blue" speckling. Applicants believe that this information addresses the queries raised by the Examiner at page 4 of the office action, concerning Figure 1 and the control explants depicted therein.

For the reasons given above, Applicants contend that claims 26-54 are enabled and respectfully request that the Examiner withdraw this rejection.

IV. Conclusion

Applicants acknowledge the Examiner's finding that the present claims are free of the prior art. See page 5 of the office action. Applicants believe therefore that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

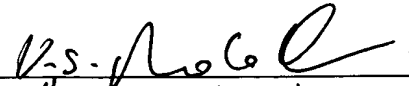
The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of

papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R.
§1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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